IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 1558 of 2001
(Old No. 387 of 1997)

Rameshwar Singh S/o Sunder Singh
R/o Village Badamawala
Post West Hope Towan
Pargana Pachhuwadun
District Dehradun ... Appellant

Vs

1. Puran
2. Phool Singh
3. Prem Chand
4. Ram Swaroop
5. Ram Kishan
   S/os of Late Sri Chet Ram
   R/o Village Badamawala
   P.O. Paschimwala
   H/o West Hope Town
   Pargana Paschimwala
   District Dehradun ... Respondetns

Sri Rajendra Dobhal, learned counsel for the appellant

Hon'ble B.C. Kandpal, J.

This appeal has been preferred by the plaintiff/appellant against the judgment and decree dated 20.03.1997 passed by Civil Judge II (Senior Division), Dehradun allowing the appeal No. 87 of 1995 and setting aside the judgment and decree dated 29.09.1995 passed by IInd Additional Civil Judge (Junior Division), Dehradun in Original Suit No. 92 of 1989.

2. Brief facts of the case are that the suit was filed for permanent injunction which was decreed by the trial court and thereafter, an appeal was filed by the defendant before the appellate court whereby the judgment of the trial court was set aside by the appellate court.

3. Feeling aggrieved by the aforesaid judgment and decree passed by the lower appellate court, this second appeal

3. Feeling aggrieved by the aforesaid judgment and decree passed by the lower appellate court, this second appeal has been preferred before the Allahabad High Court which has been transferred to this Court after creation of separate State.

4. The lower appellant court has clearly observed in the judgment that the trial court did not assess the evidence adduced by the parties properly. The record reveals that the land which was abadi land in the year 1359 fasali had already vested under the provision of Section 9 of U.P.Z.A & L.R. Act with the persons who was in possession and the record shows that the plaintiff/appellant was not in possession over the land in question but the same was in possession of the defendant/respondents for the last 50 years. The lower appellate court has rightly concluded that at the time of the enforcement of U.P.Z.A. & L.R. Act, the land in question was in possession of the defendant/respondents, therefore, the land in question had also vested with defendant/respondent in view of the provision of U.P.Z.A. & L.R. Act.

5. I do not find any infirmity in the impugned judgment passed by the lower appellate court. The finding of fact which has been concluded by the lower appellate court cannot be disturbed by re-assessing the evidence at the stage of second appeal. I also do not find any substantial question of law in the present appeal.

6. The appeal lacks merit and is liable to be dismissed.

7. Accordingly the appeal is dismissed in-limine.

(B.C. Kandpal, J.)

30.10.2006
ASWAL